

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re Petition of Verizon New England Inc. for
Arbitration of an Amendment to Interconnection
Agreements with Competitive Local Exchange
Carriers and Commercial Mobile Radio Service
Providers in Massachusetts Pursuant to Section
252 of the Communications Act of 1934, as
Amended, and the *Triennial Review Order*

Docket No. 04-33

**AT&T COMMUNICATIONS OF NEW ENGLAND, INC.'S RESPONSE TO VERIZON'S
MOTION TO HOLD PROCEEDING IN ABEYANCE**

Introduction

AT&T Communications of New England, Inc. ("AT&T"), on its behalf and that of its affiliates TCG and ACC, responds to Verizon Massachusetts' ("Verizon") Motion to Hold Proceeding in Abeyance until June 15, 2004.

As the principal basis for its motion, Verizon asserts that the parties need to "devote their full attention to commercial negotiation without the distraction of simultaneous litigation."

AT&T agrees that the commercial negotiations are important as are the negotiations regarding the TRO amendment at issue in this proceeding. There is no doubt that this arbitration will proceed much more efficiently and expeditiously if the parties engage in substantive negotiation to identify and narrow the issues in dispute. Unfortunately, to date Verizon has failed to respond in any meaningful way to AT&T's detailed response to Verizon's proposed TRO amendment. Not only has Verizon failed to respond to AT&T's mark-up of Verizon's proposal, it has never

provided even its initial position with respect to the completely new sections of the amendment proposed by AT&T on such topics as line splitting, line conditioning, subloops, and hot cuts. Until Verizon provides a substantive response to AT&T's (and the other CLECs') draft amendments or engages in good faith negotiations to narrow the issues in dispute, the scope of the arbitration will remain murky at best. Thus, as a matter of principal, AT&T is not at all averse to using the next month to engage in substantive negotiation both at the highest levels of the organizations and regarding the particular issues in this proceeding.

However, as AT&T has indicated in previous filings in this docket, with each passing day AT&T suffers significant financial and operational harm as a result of Verizon's failure to meet its obligations under current law, the ICA and the Triennial Review Order ("*TRO*"). AT&T should not incur additional injury in order to accommodate Verizon's request for an abeyance. Thus, AT&T will agree to Verizon's request for an abeyance if Verizon (i) is required to perform routine network modifications and provide Enhanced Extended Links ("EELs") as required under current law; and (ii) is prevented from unilaterally implementing its own interpretation of the interconnection agreements ("ICAs") before the Department can consider in this docket Verizon's rights and obligations under such agreements.

Argument

Despite unambiguous legal obligations, Verizon has failed to perform routine network modifications and to provide EELs as mandated. This causes ongoing harm to AT&T that AT&T needs addressed immediately. Instead, Verizon has held AT&T's rights hostage, demanding acquiescence to Verizon's unreasonable proposed *TRO* amendments before it will perform its legal obligations. As a result, AT&T opposes any abeyance that will delay its ability

to obtain relief in the form of an order requiring Verizon to meet its contractual and legal obligations. In addition, AT&T is concerned that Verizon may unilaterally discontinue its provisioning of certain UNEs (or unilaterally charge more for such UNEs) should the *USTA II* decision become effective before the Department has an opportunity to interpret Verizon's contractual obligations in this proceeding. An abeyance will impede a near-term decision in this proceeding interpreting the scope of Verizon's obligations under the *TRO* and, perhaps, *USTA II*. As a result, any abeyance should be conditioned on an order that Verizon preserve the status quo and fulfill its current obligations under its ICAs during the pendency of this proceeding.

I. VERIZON SHOULD BE REQUIRED TO PROVISION UNES REQUIRING ROUTINE NETWORK MODIFICATIONS AND TO CONVERT EXISTING SPECIAL ACCESS CIRCUITS TO EELS AS MANDATED BY EXISTING LAW.

In the absence of an order from the Department requiring Verizon to comply with its existing obligations to provision UNEs requiring routine network modifications and to provide EELs or conversions of special access to EELs, AT&T is prejudiced by delay in the arbitration. As explained below, however, if the Department requires Verizon both to live up to its existing obligations under the *TRO* and preserve those obligations during the pendency of this proceeding, then AT&T agrees that a short abeyance is reasonable.

The *TRO* clarified that Verizon's ongoing refusal to perform routine network modifications violates existing law.¹ Because the FCC's clarification of Verizon's existing obligation does not constitute a change in those obligations, there has been no "change of law" and the issue regarding network modifications is, therefore, not ripe for arbitration; however, AT&T seeks an order from this Department requiring Verizon to abide by the clarifications of

the *TRO* concerning routine network modifications. Specifically, Verizon should be directed to abide by the FCC's definition of "routine network modifications" which include "those activities that incumbent LECs regularly undertake for their own customers."² Examples of such necessary loop modifications include "rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer."³

The Arbitrator in Rhode Island's *TRO* Arbitration and the Hearing Examiner in Maine's *TRO* Arbitration have already concluded that the *TRO* does not alter Verizon's obligations to provide routine network modifications and have ordered Verizon to comply with the clarified definitions set forth in the *TRO*. A similar order is warranted here and should be made part of an any order staying this proceeding until June 15 or later.

Similarly, the *TRO* clarifies that Verizon must provide EELs upon the *TRO*'s effective date, October 2, 2003, and permit CLECs to order new circuits as EELs or to convert existing special access circuits to EELs, so long as the requesting CLEC meets certain criteria.⁴ AT&T has met the required criteria yet Verizon has, unlawfully, refused to provide EELs at TELRIC prices in Massachusetts until AT&T executes Verizon's proposed unreasonable modifications to AT&T's ICA with Verizon. Verizon refusal has resulted in AT&T's payment of inflated, above-cost special access fees for circuits that qualify under the *TRO* for TELRIC prices as EELs. This

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¹ *TRO*, n.1940; see also *AT&T Response to Verizon Petition*, pp. 18-19.

² *Id.*

³ *Id.*, ¶ 634.

not only violates the *TRO*; it also violates Verizon's obligations under its Tariff 17, Part B, Section 13, which requires Verizon to accept EEL orders for new or converted circuits meeting the new eligibility criteria issued by the FCC in the *TRO*. The result of Verizon's refusal to comply with the *TRO* and its own tariff is that AT&T must pay significantly more than the cost Verizon incurs for the facilities they both use to compete for the same retail customers. In short, Verizon's refusal to provide these circuits as EELs at TELRIC rates significantly compromises AT&T's ability to compete against Verizon. For this reason, if private discussions between the parties fail to resolve the matter, AT&T will soon file a Petition to Enforce Verizon Tariff 17. AT&T also seeks in this docket a contractual mandate in the *TRO* amendment requiring Verizon to comply with its legal obligations.

Given these chronic failures by Verizon, which are causing significant harm to AT&T, Verizon's abeyance motion should be granted subject to an order that requires Verizon to (1) honor its existing contract obligation to provide UNEs at the prices specified in its ICAs when UNEs requiring routine network modifications of the types specified in the *TRO* are ordered; (2) accept orders for EELs in accordance with the eligibility standards in the *TRO*, as required under Verizon's own tariff; and (3) maintain the status quo as described below.

**II. VERIZON SHOULD MAINTAIN THE STATUS QUO (AT EXISTING RATES)
WHILE THE ARBITRATION IS PENDING.**

AT&T is concerned that delay in this proceeding will provide an opportunity for Verizon unilaterally to implement its proposed *TRO* amendments upon the effective date of *USTA II* and

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⁴ *TRO* ¶ 579.

before the Department can consider Verizon's rights and obligations under its ICAs. As a further condition for holding this proceeding in abeyance, Verizon should be required to continue to provision UNEs and dedicated transport as specified under its current ICAs until the Department has concluded this arbitration. Verizon should not be permitted simultaneously to stall these proceedings, preventing the Department from expeditiously ruling on its proposed amendments, while unilaterally discontinuing certain offerings based on its self-serving interpretation of the *TRO* or the *USTA II* decision. Not only would such unilateral action by Verizon significantly disrupt customers and cause widespread marketplace confusion, it would be entirely inconsistent with Verizon's legal and contractual obligations. Unless AT&T can obtain comfort from Verizon that it intends to live by its contract obligations, AT&T intends in the near term to file a Motion to Preserve the Status Quo in which it will fully brief the legal and contractual obligations which prevent Verizon from discontinuing UNEs and dedicated transport or increasing their price should *USTA II* take effect. Thus, Verizon should be required to continue to operate under its current ICAs until the Department has had the opportunity to determine the scope of Verizon's continuing obligations post-*USTA II*.

At least one State Commission has already issued a status quo order in response to Verizon's identical motion for abeyance in the Texas *TRO* amendment arbitration proceeding. The Public Utility Commission of Texas conditioned its abeyance on the requirements that Verizon continue to operate under its current ICAs and "UNEs will continue to be offered consistent with those agreements."⁵ A similar order is warranted in this docket.

⁵ Order Abating Proceeding, Public Utilities Commission of Texas, Docket NO. 28821, May 5, 2004. Attached to Sprint's March 10, 2004 filing in this docket.

Conclusion

For the reasons stated above, AT&T does not oppose Verizon's motion to hold the arbitration in abeyance, if (1) Verizon is required to perform routine network modifications and comply with its own tariff provision to accept EEL orders that satisfy eligibility standards specified in the TRO; and (2) the status quo is preserved during this proceeding.

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